IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 50 (MS) OF 2001

Hansa Dutt,
s/o late Dharmanand,
R/o Mohalla-Dunga-Dhara,
Tehsil & District-Almora. .....Petitioner.

Versus

1. Board of Revenue, U.P. at Allahabad.
2. Nagar Palika, Almora, through Chairman.
3. Kailash Chandra,
4. Anand Ballabh.
5. Rajendra Prasad,
6. Naveen Chandra,
7. Vinod Kumar,
   respondents no. 3 to 7 are S/o Luxmi Joshi, R/o Mohall-Dunga-Dhara, Tehsil & District: Almora.
8. Ramesh Chandra,
   S/o Naraitam,
9. Pramod Chandra,
   S/o Mohan Chandra,
10. Heera Ballabh,
    S/o Bholla Dutt,
11. Pooran Chandra,
12. Sarjan
13. Sunil
14. Bantoo,
    respondents no. 11 to 14 are S/o Ganesh Dutt,
15. Dayadhan

S/o Devi Dutt,

16. Lalit,

17. Jugal Kishore,

18. Nawal Kishore,

S/o Mathura Dutt. .....Respondents.

Dated: 03.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri M.C. Kandpal, Sr. Advocate, assisted by Sri S.S. Chaudhary, Advocate for the petitioner, Sri K.C. Tiwari, Advocate for the respondents no. 3 to 7.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 19.10.2000 passed in First Appeal from Order No. 4 to 7/93-94 passed by the Board of Revenue, U.P. at Allahabad.

Briefly stated, according to the case of the petitioner, a suit was filed under Section 176 of the U.P. Z.A. & L.R. Act by the petitioner regarding the land of Village Golma Patty Khash Parja, Thesil and District-Almora regarding Khata No. 3 area 25 Nali 8 Mutti and Khata No. 17 area 15 Nali 3 Mutti, in other small plots the total area is 92 Nali.

However, the respondents have disputed the aforesaid area in question.

The suits were decided by the S.D.M. Almora declaring both the parties as co-sharer of half and half. The respondents have preferred appeal before the Commissioner being Appeals No. 146/41 of 1991-92, 116/39 of 1991-92, 115/40 of 1991-92 and 147/42 of 1991-92,

On 24.05.1993, the Commissioner has held that the suit under Section 176 is not maintainable.

Petitioner has preferred a review petition and the review was allowed on 21st September, 1993. Against the said order, the respondents have preferred a First Appeal from Order No.

4 to 7 of 1993-94 before the Board of Revenue and with the following direction, the same was sent back to the Commissioner:-

"इसके अतिरिक्त विवादित भूमि में पक्षों के अंप्र क्या है, इस सम्बन्ध में मौखिक एवं अन्य प्रस्तुत अभिलेखीय साक्ष्य पर विचार करके अपीलीय न्यायालय द्वारा निर्णय लिया जाना आवप्रयक है, जेड0 ए0 एक्ट के प्राविधान के अनुरूप उभय पक्षों का किताना अंप्र होता है, उसके उपरान्त बंटवारें के सम्बन्ध में अग्रिम कार्यवाही किया जाना उचित होगा, तद्नुसार उपरोक्त एफ0ए0एफ0ओ0 स्वीकार करते हुए यह पत्रावली अपीलीय न्यायालय को इस निर्देप्र के साथ वापस की जाती है कि उपरोक्त विवेचना के परिप्रेक्ष्य में निणर्य पारित किया जावे।"

Sri M.C. Kandpal, Sr. Advocate, assisted by Sri S.S. Chaudhary has submitted that F.A.F.O. was not maintainable and only a revision lies before the Board of Revenue assigning the F.A.F.O. was not maintainable and the Section of the U.P. Z.A. & L.R. Act is the remedy before Board of Revenue. Ot os settled law that the party should not be deprived of nomenclature and any technicalities should not come in the way of dispensation of justice in view of the law laid down in ***M.S. Grewal Vs. Deep Chand Sood (2001) 8 SCC 151.*** The Apex Court has held in ***M.S. Grewal (supra)*** as under:-

"law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

Counsel for the respondents has referred ***A.M. Allison and another v. B.L. Sen and others AIR 1957 SC Page 227,*** where it has been held that the certiorari under Article

226 cannot be issued as of right there has been a failure of justice. Paragraph 17 to that effect is quoted below:-

"(17) Therea are moreover special reasons why we should not interfere with the orders of the Deputy Commissioner, Sibsagar, in these appeals. The matters do not come to us by way of appeal directly from the orders of the deputy Commissioner, Sibsagar. They were the subject, is the first instance of proceedings under Art. 226 of the Constitution in the High Court of Assam. Proceedings by way of certiorari are "not of course" (Vide Halsbury's Law of England', Hailsham Edition, Vol. 9, paras 1480 and 1481, pp. 877-878). The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice, and in these appeals which are directed against he orders of the High Court in applications under Art. 226, we could refuse to interfere unless we are satisfied that the justice of the case requires it. But we are not satisfied. We are of opinion that, having regard to the merits which have been concurrently found in favour of the respondents both by the Deputy Commissioner, Sibsagar, and the High Court, we should decline to interfere."

In view of the aforesaid proposition of law admittedly both the parties are contesting for the partition under Section 176 of the U.P. Z.A. & L.R. Act and the suits have been filed by the petitioner himself, therefore, there will be no harm in passing the order by the Board of Revenue for getting their share allotted.

Further admittedly, the Board of Revenue has the controlling power and may call for the record and nomenclature alone is wholly immaterial.

The order passed by the Board of Revenue, therefore, requires no interference in view of the fact the share of the

parties have to be decided in accordance with the partition claimed by the petitioner under Section 176 of the U.P. Z.A. & L.R. Act.

However, the impugned order is modified to this extant that instead of sending the matter to the Commissioner, the same is sent back to the Assistant Collector for the proceedings for partition under Section 176 of the U.P. Z.A. & L.R. Act in accordance with the share of the parties and thereafter conclude the same within a period of four months.

Subject to above, I find no merit in the writ petition so as to interfere under Article 226/227 of the Constitution of India and is dismissed. No order as to costs.

(Rajesh Tandon, J.)

03.07.2006.
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